

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BEN SCOFIELD,)	
)	
Plaintiff,)	District Court No.: 4:20-cv-1599
)	
vs.)	Circuit Court No: 20JE-CC00277
)	
WSTR HOLDINGS, INC. d/b/a BIG DOG)	
TREESTANDS, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. (“Defendant”), by filing this Notice of Removal and related papers, removes this action from the Circuit Court of Jefferson County, Missouri, to the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. §§ 1332(a)(1), 1441 and 1446, and Fed. R. Civ. P. 81 (c). This Court has removal jurisdiction because this is a civil action brought in a State Court of which the District Courts of the United States have “original jurisdiction.” 28 U.S.C. § 1441(a). The District Courts have “original jurisdiction of all civil actions where the matter in controversy exceeds the sum of the value of \$75,000.00 . . . and is between – (1) citizens of different states.” 28 U.S.C. § 1332. The grounds for this removal are as follows:

Background

1. Plaintiff Ben Scofield (“Plaintiff”) filed the present action *Ben Scofield v. WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. and Buchheit of Herculanenum, Inc.* in the Circuit Court of Jefferson County, Missouri, Case No. 20JE-CC00277 on April 16, 2020 against

Defendant and Buchheit of Herculaneum, Inc. (“Buchheit”), referenced as the “State Court Action.”¹ See **Exhibit A**, State Court Action pleadings and papers.

2. Defendants were served with the Summons and Petition in the State Court Action.

3. Plaintiff’s Petition provides claims under theories of Strict Liability in Tort (Count I), Strict Liability Failure to Warn (Count II) and Negligence of Defendants (Count III).

4. At the time the Petition was filed and at the time Defendants were served, the State Court Action was not removable because Plaintiff had asserted claims against Co-Defendant Buchheit, which was a citizen of Missouri.

5. Based on discovery and the prior voluntary dismissal of Buchheit from the Initial Action filed by Plaintiff, Buchheit filed a Motion to Dismiss in this action on June 10, 2020 when Plaintiff refused to voluntarily dismiss it. See **Exhibit A**.

6. On October 30, 2020, an Order dismissing Buchheit under the Innocent Seller Statute Sec. 537.762 was entered in the State Court Action, attached as **Exhibit D**.

7. This Notice of Removal is filed within thirty days after October 30, 2020, from which it may first be ascertained that the case is one which is or has become removable and this Notice is filed within one year after the commencement of the State Court Action. Removal is timely pursuant to 28 U.S.C. § 1446(b)-(c).

8. In accordance with 28 U.S.C. § 1446(a) a copy of all pleadings and papers that have been filed and served in the State Court Action are attached to this Notice as **Exhibit A**. Defendant

¹ Prior to filing the present action, Plaintiff had previously filed suit against Defendant and Buchheit in the Circuit Court of Jefferson County, Missouri, Case No. 17JE-CC00227 in 2017 (the “Initial Action”). During the Initial Action, after completing discovery and motion practice, Plaintiff voluntarily dismissed Buchheit on February 4, 2020, attached as **Exhibit B**. While Defendant’s motion for summary judgment was pending with the Court, Plaintiff then voluntarily dismissed the entire action, attached as **Exhibit C**.

has filed contemporaneously with this Notice a civil cover sheet, Plaintiff has not served upon Defendant any other process, pleadings or orders in this action.

Diversity Jurisdiction Exits

9. Jurisdiction in this case is proper in the United States District Court pursuant to the provisions of 28 U.S.C. § 1332, based on diversity of citizenship.

A. The Plaintiff

10. According to the Petition, Plaintiff is a resident and citizen of the State of Missouri. As such, for diversity purposes, Plaintiff is a citizen of Missouri.

B. The Removing Defendant

11. Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. is now, and was at the time of the commencement of this action, an Illinois corporation with its principal place of business in Illinois. Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. is a citizen of Illinois. As such, for diversity purposes Defendant is not a citizen of Missouri.

12. Consent is not required in this case because the removing Defendant is the only remaining defendant in this case.

C. The Recently Dismissed Defendant

13. The dismissed defendant, Buchheit of Herculaneum, Inc. is now, and was at the time of the commencement of this action, a Missouri corporation with its principal place of business in Missouri. Dismissed defendant Buchheit is a citizen of Missouri. The Circuit Court of Jefferson County, Missouri recently entered an Order dismissing Buchheit from this action on October 30, 2020. As such, Buchheit's citizenship should no longer be considered for diversity jurisdiction purposes.

Grounds for Removal

14. This action is being removed pursuant to 28 U.S.C. § 1441 *et seq.* This action could not have originally been brought in this Court pursuant to 28 U.S.C. § 1332 because this action was not removable originally as pled by Plaintiff.

15. This Notice of Removal is timely filed because it was filed within thirty days from when the case became removable and has been less than one year since the State Court Action was originally filed. Thus, under 28 U.S.C. § 1446 (b)-(c), Defendant's time to remove has not yet expired.

16. The Circuit Court of Jefferson County, Missouri is located within the Eastern District of Missouri. 28 U.S.C. § 105(b)(1). Thus, venue is proper in this Court because it is the "district and division embracing the place where such [state court] action is pending." 28 U.S.C. § 1441(a).

17. Although Plaintiff's Complaint does not seek a set amount of damages, it is facially apparent from the pleading that the amount in controversy exceeds \$75,000 exclusive of interests and costs. This is a product liability case wherein Plaintiff claims the subject climbing stick was defective and unreasonably dangerous. Plaintiff alleges that after the fall he sustained severe injuries to his back, right heel resulting in fracture, burst fractures at T11 through L3, and thoracic and lumbar compression fractures which required surgical implantation of rods and screws in his back. He also alleges he has suffered and will continue to suffer economic loss.

18. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is diversity of citizenship as to the properly joined parties, who are citizens of different states, the amount in controversy exceeds \$75,000 exclusive of interests and cost, and Plaintiff has not properly joined any defendant who is a citizen of the state in which the action was

brought. Since the Circuit Court has dismissed co-defendant Buchheit from this action, the citizenship of Buchheit should be disregarded.

19. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the Clerk of the Circuit Court of Jefferson County, Missouri and will be served upon counsel for Plaintiff. A true and correct copy of the written Notice of Filing Notice of Removal is attached hereto as **Exhibit E** and incorporated herein by reference. Plaintiff is hereby notified to proceed no further in state court.

20. Defendant hereby demands a trial by jury.

WHEREFORE, Defendant WSTR Holdings, Inc. d/b/a Big Dog Treestands, Inc. hereby notifies this Court, Plaintiff and the Circuit Court of Jefferson County, Missouri that the above-captioned matter, now pending against it in the Circuit Court of Jefferson County, Missouri has been removed to this Court, and demands a trial by jury.

Respectfully submitted this 9th day of November, 2020.

EVANS AND DIXON, L.L.C.

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Big Dog Treestands, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was filed electronically with the Clerk of the Court to be served on all parties of record by operation of the Court's electronic filing system on this 9th day of November, 2020.

/s/Brian R. Shank